

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

C.A. No. 05-11045-GAO

MICHAEL BAEZ,
Plaintiff

v.

MICHAEL MALONEY, et al.,
Defendants

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

The defendants in the above-captioned action, through undersigned counsel, oppose the *pro se* prisoner plaintiff's motion to compel production of documents, pursuant to Fed. R. Civ. P. 34, on the ground that it is premature, since the plaintiff has never served them with any requests for production of documents. Affidavit of Margaret Melville, attached. Accordingly, the Court should deny the motion.

The rule for requesting production of documents, on which the plaintiff relies, does not provide for an order compelling production. Fed. R. Civ. P. 34. Rather, only a failure to respond to a previously served request for production can give rise to a motion to compel, pursuant to Fed. R. Civ. P. 37. Until the plaintiff has served a request for production, he cannot move the Court to compel a response until, and only if, the defendants fail to respond. Since Baez has not served any requests for production of documents on the defendants or their

counsel, the defendants cannot be found to have failed to respond. The plaintiff is attempting to circumvent the procedural rules in order to obtain an order against the defendants, effectively depriving them of the opportunity to serve objections in a timely manner. *Pro se* prisoners are required to follow the rules of procedure when litigating, and the plaintiff should not be permitted to obtain an unfair advantage by ignoring procedural steps.

Accordingly, the Court must deny the plaintiff's motion to compel.

Respectfully submitted,

The defendants,
By their attorneys,

Dated: January 4, 2006

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Margaret Melville

Margaret Melville
BBO #477970
Department of Correction
Legal Office
70 Franklin Street, Suite 600
Boston, MA 02110
617-727-3300 ext. 149

CERTIFICATE OF SERVICE

I, Margaret Melville, certify that on this day, I have served the plaintiff *pro se* in the above-entitled action with a true and accurate copy of the foregoing, and Certificate of Service at his addresses of record, by First Class Mail, postage prepaid.

January 4, 2006

/s/ Margaret Melville
Margaret Melville

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
C.A. No. 05-11045-GAO

MICHAEL BAEZ,
Plaintiff

v.

MICHAEL MALONEY, et al.,
Defendants

AFFIDAVIT OF MARGARET MELVILLE

I, Margaret Melville, do on oath depose and state that the following is true to the best of my knowledge, information and belief.

1. I am an attorney in good standing licensed to practice law before the bars of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts. I am sole counsel for the defendants in the above-captioned action.
2. The pro se plaintiff in the present case has not served the defendants with any discovery requests, including requests for production of documents and things, either directly or through me as counsel of record.

Signed under penalty of perjury on this the 4th day of January 2006.

/s/Margaret Melville
Margaret Melville